

Pension Sustainability
Legal Subgroup
Public Meeting 10/25/18
Informal Minutes

Present: Joseph Rubin, Assoc. Atty Genl (chair), Ret. Justice Ian McLachlan, Atty Erin Choquette, DAS, Catherine LaMarr, General Counsel to the Treasurer

Invited guest: Atty Brian J. Dudack, DOT

See attached list of subjects entitled "Pension Sustainability, Legal Subgroup, Meeting 10/25/18." The following comments relate to that document:

I. Reviewed matters listed under I on attached outline for meeting.

No changes to I)a).

Regarding I)b), we added the following to the general list of potentially applicable legal restrictions: "Restrictions created by terms of bond funding for acquisition and IRS restrictions that accompany properties acquired by tax except bonds."

Also regarding I)b), Atty Dudack provided the following info:

Per 23 CFR 710.403f, parts 645 and 646, for DOT properties acquired with federal funds, if sold or transferred, funds must go to state Transp fund or be returned.

Federal approval is necessary to abandon railroad rights of way.

For many roadways, DOT holds only an easement and not fee in the underlying land. DOT does not have separate lists of all properties owned, valuation, or restrictions.

Also regarding I)b)5) the undersigned learned on 10/26 at a meeting of the Asset Selection Subgroup that there does not appear to be any central list of restrictions on state properties.

II. Regarding Section II, we had nothing to add, but noted that bonding-based restrictions may also apply to properties associated with these entities.

III. Regarding other legal issues that may need consideration, we added the following to the existing list,:

c) Fiduciary considerations for Treasurer as fiduciary of the Funds about suitability about any proposed changes or additions to fund assets and valuation of same

d) IRS issues related to properties acquired through bonding

e) General IRS issues related to Pension funds

f) Method of valuation of properties that may be added to Funds.

- IV. Without commenting on the wisdom or desirability of creating one or more LOTs, we noted that we do not have expertise to suggest a structure for LOTs or an LOT manager. We might be able to help suggest criteria to consider in selecting qualified counsel to develop those plans. Those criteria might include expertise in the law of trusts, fiduciary responsibility, taxation, investments and real estate development, and perhaps municipal and governmental law

Respectfully submitted,

Joseph Rubin 10/29/18

(not reviewed by other members because of time constraints, and so subject to revisions)